

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

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Nyen Excavating, Inc., and
Granite Re, Inc.,

File No. _____

Plaintiffs,

vs.

COMPLAINT

United Fire & Casualty Company,

Defendant.

* * * * *

Plaintiffs Nyen Excavating, Inc. ("Nyen") and Granite Re, Inc., ("Granite Re") for their complaint against Defendant United Fire & Casualty Company ("United Fire"), state and allege as follows:

1. Nyen is a Minnesota corporation with its principal place of business at 12775 County Road 43, Chaska, Minnesota 55318. Nyen was one of the excavating contractors on the project identified in paragraph four (4) below.
2. Granite Re is an Oklahoma corporation with its principal place of business at 14001 Quailbrook Drive, Oklahoma City, Oklahoma 73134-1757. Granite Re is the surety for Nyen on the project identified in Paragraph four (4).
3. United Fire is a foreign insurance company authorized to issue payment and performance bonds on public construction projects in Minnesota.
4. United Fire issued payment and performance bonds ("Bond No. 54-171757") for a Minnesota Department of Transportation project involving Highways 13 and 14 in Waseca, Minnesota, SP8101-44, on behalf of Webster Grading, Inc., d/b/a Rud Excavating of Webster

("Rud") as principal. Attached hereto as *Exhibit A* is a true and correct copy of the Subcontract Labor & Materials Bond entered into between Rud and United Fire.

5. Nyen is a "claimant," as defined in the Subcontract Labor & Materials Bond.

6. Rud has failed to pay Nyen for labor, equipment and materials used and consumed on the project as a result of which Nyen and Granite Re have been damaged.

7. As Nyen's surety, Granite Re has suffered losses on bonds issued on behalf of Nyen. In addition, Granite Re has the right to assert Nyen's claims as an assignee of Nyen's contract rights by virtue of contractual assignment and equitable subrogation.

8. Nyen properly and timely filed a payment bond claim against United Fire following Rud's payment defaults. Nyen's Notice of Claim on Payment Bond for Public Work is attached hereto as *Exhibit B* and incorporated herein by reference.

9. Neither Rud nor United Fire have made payments to Nyen or Granite Re, as a result of which, Nyen and Granite Re have been damaged in an amount in excess of \$75,000.00.

WHEREFORE, Plaintiffs Nyen Excavating, Inc., and Granite Re, Inc., demand judgment against Defendant United Fire & Casualty Company for an amount in excess of \$75,000.00, together with interest, costs and attorneys' fees, plus other and further relief as Plaintiffs Nyen Excavating, Inc., and Granite Re may be entitled to at law or equity.

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November 19, 2010.

By 

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